

G. INELIGIBILITY

Overview

Introduction Once a participant has been placed on the WIC Program, they are entitled to program benefits for an entire certification period. Proper steps must be taken prior to removing a participant from the program. This section will review procedures for removing a participant from the WIC program.

In this section In this section you will find the following information.

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G.1. Ineligibility

Definition	Applicants who initially apply for the WIC Program but do not meet all three of the criteria for eligibility (residency, income, nutritional risk) are ineligible to receive WIC benefits.
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Documentation	<p>An ineligible file must be kept for all applicants who are not eligible for the program. A new file should be made for each fiscal year (October 1 to September 30). The following information must be found in the ineligible file:</p> <ul style="list-style-type: none">• Print screen 202 of the UWIN computer system• Issuance of the Letter of Ineligibility.* Place a copy of the letter in the file or document the letter was issued in the scheduling screen of the computer.• Information to support “No Nutritional Need” (if reason for ineligibility)• Anthropometric data• Biochemical data• Medical history noting no medical problems• A scored dietary history showing no nutritional deficiencies
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*Note: The Letter of Ineligibility may be printed from the UWIN system or the local agency may print them on Local Agency letterhead. The letter must contain information on the fair hearing form. A copy of the Letter of Ineligibility is found in the Forms section of this manual. The Fair Hearing form is found at the back of this section.

G.2. Termination

Definition	A participant who is removed from the WIC Program for any reason.
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Termination files	Charts must be kept on all participants terminated from the WIC program. Terminated charts must be filed by federal fiscal year (Oct. 1 - Sept. 30).
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Termination during certification	A participant who is about to be removed from the WIC program at any time during their certification period must be notified in writing at least 15 days before being removed from the program. The participant must be told of the reason they are being removed from the program and of their right to a fair hearing.
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Participants may be disqualified in the middle of their certification period for the following reasons:

- family is now over income
- participant abuse

Termination due to categorical ineligibility	Participants who become categorically ineligible must receive a notification 15 days prior to removing them from the program and of their right to a fair hearing.
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Participants become categorically ineligible for WIC for the following reasons:

- child who turns 5 years old
- woman whose baby is 6 months old and she is not breastfeeding
- woman whose baby is 1 year old and she is breastfeeding
- woman who discontinues breastfeeding when her baby is between 6 and 12 months.

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G.2. Termination, Continued

Documentation The Letter of Ineligibility must be used to notify participants of their termination from the program. The letter must state the reason the participant is no longer eligible for the WIC program. Document that the letter was given in screen 108 of the UWIN system, or in the computer scheduling system (using code “I”) **if they also attended class.**

The Letter of Ineligibility may be printed from the UWIN system or the local agency may print them on local agency letterhead. The letter must contain information on fair hearings. A copy of the Letter of Ineligibility is found in the Forms section of this manual. The Fair Hearing form is found on page G.25.

Missed appointments Once certified, participants should be encouraged to receive benefits on a continual basis. Clinics should strive to voucher 95% of their caseload each month. Reminding participants that they have missed their appointment is one way to increase the number of participants served in each clinic.

Clinics must attempt to contact each pregnant woman who misses her first appointment to apply for WIC in order to reschedule her appointment. The attempt must be documented (i.e. missed appointment letter sent, second appointment scheduled in screen 107, etc.). Use the woman’s address and telephone number documented in screen 101 or on the Application Log.

Participants who miss their appointment must receive a Missed Appointment letter. They may be terminated for not picking up vouchers for two months in a row and for not responding to the Missed Appointment letter. The UWIN system automatically terminates participants whose base dates are two months in the past or whose certification period is over.

Document that the Missed Appointment letter was mailed in the scheduling screen, on the Missed Appointment report, or in the participant’s file. A copy of the Missed Appointment letter may be found in the Forms section of this manual.

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G.2. Termination, Continued

**Participants
who are late for
appointments**

Participants may not be terminated for being late to an appointment. Participants who are late or continuously miss their appointments should be counseled concerning the importance of keeping appointments and of notifying the WIC clinic in advance if they cannot keep an appointment.

Local clinics may wish to form their own policy dealing with participants who are late for appointments. The policy must be sent into the state office for review.

**Screen 108
comments**

To avoid loss of data, the clinic staff must “Print Screen” screen 108 after terminating a participant from the program. The documentation should be kept in the participant’s file.

G.3. Recertification

Recertification Participants must receive a reminding notice that their certification period is about to end. Participants must be notified at least 15 days prior to actual expiration. Notification may be given via the Recertification letter (in the Forms section of this manual) or verbally.

Document that the participant was notified of their need for recertification in the participant's chart, in screen 108 or screen 107 **if they attend a nutrition education class** (using code "O"). A copy of the letter does not need to be kept.

G.4. Complaints

Complaints

1. All complaints written or oral directed toward clinic or agency personnel, regarding potential or alleged participant, vendor, or clinic/agency abuse, obtained by any method, needs to be initially documented on a **Complaint Log** so that appropriate investigative procedures, follow-up, and resolution can be examined if the participant/vendor requests a fair hearing.
 2. Complaints may require further documentation on the **WIC Participant Alleged Abuse Report, Local Agency Vendor Complaint Form, WIC Participant Abuse Log**, or other complaint form in order to detail the incident. The **Complaint Log** need only refer to those other forms for the more detailed account.
 3. When possible, try to acquire a written statement from the individual(s) making the complaint. Vendors may use the **Business Reply Card** to document participant complaints.
 4. All Civil Rights complaints will be forwarded to USDA.
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G.5. Definitions

Definitions

1. **Definitions:**
 - A. **Complaint** means a formal or informal allegation or protest against a WIC vendor, participant, clinic, or agency that cannot be adequately or completely explained or resolved totally on the basis of simple clarification of WIC Program policy and procedures.
 - B. **Participant violation** means any intentional action of a participant, parent or caretaker of an infant or child participant, **or** proxy that violates Federal or State statutes, regulations, policies, or procedures governing the Program. Participant violations include intentionally making false or misleading statements or intentionally misrepresenting, concealing, or withholding facts to obtain benefits; exchanging food instruments or supplemental foods for cash, credit, non-food items, or unauthorized food items, including supplemental foods in excess of those listed on the participant's food instrument; threatening to harm or physically harming clinic or vendor staff, and dual participation.
 - C. **Proxy** means any person designated by a woman participant, or by a parent or caretaker of an infant or child participant, to obtain and transact food instruments or to obtain supplemental foods on behalf of a participant. The proxy must be designated consistent with the State agency's procedures established pursuant to § 246.12(r)(1). Parents or caretakers applying on behalf of child and infant participants are not proxies.
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G.6. WIC Participant Abuse

Participant Abuse

1. If the participant:

<ul style="list-style-type: none"> Received change in cash from a WIC purchase 	<ul style="list-style-type: none"> Used food instruments that were reported lost or stolen with redemption of both the lost and replacement food instruments
<ul style="list-style-type: none"> Received from the food vendors cash or credit toward purchase of unauthorized foods or other items of value in lieu of authorized supplemental foods 	<ul style="list-style-type: none"> Sold the supplemental foods or food instruments to, or exchanged with, other individuals or entities
<ul style="list-style-type: none"> Exchanged a food instrument for anything other than prescribed foods 	<ul style="list-style-type: none"> Participant received & redeemed food instruments from two different WIC Clinics during the same month(s) - (Dual Application)
<ul style="list-style-type: none"> Attempted to redeem, received or purchased unauthorized foods (foods not listed on the WIC food instruments), or more WIC foods than authorized 	<ul style="list-style-type: none"> Intentionally made false or misleading statements or intentionally misrepresented, concealed, or withheld facts to obtain benefits
<ul style="list-style-type: none"> Redeemed a WIC food instrument outside authorized dates 	<ul style="list-style-type: none"> Altered the food instrument(s) in any way including intentionally utilizing false signatures, or proxies
<ul style="list-style-type: none"> Verbally or physically abused or threatened physical abuse of clinic or vendor staff 	

2. Methods of Detecting Participant Abuse:

<ul style="list-style-type: none"> Improper food instrument redemption procedures 	<ul style="list-style-type: none"> Reports/complaints from vendors/participants and/or other agencies
<ul style="list-style-type: none"> Dual Application reports 	<ul style="list-style-type: none"> Participant admits wrong doing/violation during WIC clinic visit, voucher issuance, and/or investigation of improper redemption procedures

Local Agency Participant Abuse Guidelines

3. Participant abuse is handled using the following guidelines:

- A. Once the local agency becomes aware of the alleged participant abuse, the clinic MUST designate a comment in the UWIN System, Screen 108, Priority 1 (locking out food issuance) indicating that the participant must be counseled PRIOR to food issuance. Once counseled and the Utah WIC Alleged Participant Abuse Report completed, the comment should be acknowledged ONLY, not deleted. If the comment section becomes full, perform a "print screen" and keep the hard copy in the file. Then the comments can be deleted.

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G.6. WIC Participant Abuse, Continued

PARTICIPANT ABUSES AND CORRECTIVE ACTIONS:

**** Possible repayment of benefits**

PARTICIPANT ABUSE	CORRECTIVE ACTION	
	FIRST OFFENSE	CORRECTIVE ACTION REPEATED OFFENSES (within a Certification period)
1) Redeemed a WIC food instrument outside authorized dates	<u>WARNING</u> documented in the WIC Participant Alleged Abuse Report (Required Counseling)	<u>SUSPENSION</u> of one (1) month of benefits
2) Participant attempted to purchase, purchased and/or received unauthorized foods and/or more WIC foods than authorized	<u>WARNING</u> documented in the WIC Participant Alleged Abuse Report (Required Counseling)	<u>SUSPENSION</u> of one (1) month of benefits
3) Verbally or physically abusive or threatened physical abuse of clinic or vendor staff	<u>WARNING</u> documented in the WIC Participant Alleged Abuse Report (Required Counseling)	<u>SUSPENSION</u> of one (1) month of benefits
4) Altered the WIC food instrument in any way including intentionally using false signatures or proxy signatures**	<u>WARNING</u> documented in the WIC Participant Alleged Abuse Report (Required Counseling)	<u>SUSPENSION</u> of one (1) month of benefits
5) Received change in cash from a WIC purchase**	<u>WARNING</u> documented in the WIC Participant Alleged Abuse Report (Required Counseling)	<u>SUSPENSION</u> of one (1) month of benefits
6) Received from the food vendor cash or credit toward the purchase of unauthorized foods or other items of value in lieu of authorized supplemental foods**	<u>WARNING</u> documented in the WIC Participant Alleged Abuse Report (Required Counseling)	<u>SUSPENSION</u> of two (2) months of benefits
7) Exchanged a WIC food instrument (trafficking) for anything other than prescribed foods**	<u>SUSPENSION</u> of one (1) month of benefits (Required Counseling) or repayment of benefits if claim < \$100	<u>SUSPENSION</u> of two (2) months of benefits (if no claim was made on first offense) OR <u>MANDATORY DISQUALIFICATION</u> of one (1) YEAR* based on second or subsequent repayment of benefits
8) Sold the supplemental foods or food instruments to, or exchanged with, other individuals or entities**	<u>SUSPENSION</u> of one (1) month of benefits (Required Counseling) or repayment of benefits if claim < \$100	<u>SUSPENSION</u> of three (3) months of benefits (if no claim was made on first offense) OR <u>MANDATORY DISQUALIFICATION</u> of one (1) YEAR* based on second or subsequent repayment of benefits
9) Redeemed WIC food instruments that were reported lost/stolen with redemption of both the lost and replacement food instruments**	<u>SUSPENSION</u> of one (1) month of benefits (Required Counseling) or repayment of benefits if claim < \$100	<u>MANDATORY DISQUALIFICATION</u> of one (1) YEAR* based on second or subsequent repayment of benefits
10) Participant received & redeemed food instruments from two different clinics in the same month (Dual Application)**	<u>MANDATORY DISQUALIFICATION</u> of one (1) YEAR* OR repayment of benefits;	<u>MANDATORY DISQUALIFICATION</u> of one (1) YEAR* based on second or subsequent repayment of benefits
11) Assessment of a claim of \$100 or more for any violation	<u>MANDATORY DISQUALIFICATION</u> of one (1) YEAR* OR repayment of benefits;	<u>MANDATORY DISQUALIFICATION</u> of one (1) YEAR* based on second or subsequent repayment of benefits
12) Intentionally making false or misleading statements or intentionally misrepresented, concealed or withheld facts to obtain benefits**	<u>SUSPENSION</u> of three (3) months of benefits and/or <u>TERMINATION</u> from the WIC Program if determined to be over income and/or repayment of benefits if claim < \$100	<u>MANDATORY DISQUALIFICATION</u> of one (1) YEAR* based on second or subsequent repayment of benefits

* See exceptions to mandatory disqualification

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G.6. WIC Participant Abuse, Continued

B. Complete the appropriate information on the **WIC Participant Abuse Log**.

C. Documentation of the **WIC Participant Alleged Abuse Report**:

FORM DOCUMENTATION AREA	COMMENT
<ul style="list-style-type: none"> Clinic Number & Name; Food Instrument #: Name of Participant; Redeemed Amount; Participant ID Number; First Day to Use 	<ul style="list-style-type: none"> Complete the information from the chart and food instrument involved if applicable.
<ul style="list-style-type: none"> Alleged Abuse Categories 	<ul style="list-style-type: none"> Place an "X" in the appropriate box or boxes regarding the alleged abuse
<ul style="list-style-type: none"> Recipient, Parent or Guardian's Voluntary Statement 	<ul style="list-style-type: none"> A statement must appear in the participant/endorser's own handwriting. If this is not possible, then the staff member writing the comments MUST have a witness signature and read the statement back to the participant for any correction. The signature of the individual making the statement must be present along with a date.
<ul style="list-style-type: none"> Clinic Statement & Action Taken 	<ul style="list-style-type: none"> The clinic staff should document the incident completely beginning with a summary statement of the abuse and then present the specific details of the alleged abuse including at a minimum, dates; time(s); names of responsible individuals, families, or vendor(s); and specifics of the incident, how, when, where, etc.

- Select the appropriate boxes to be checked depending on the corrective action to be taken:

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G.6. WIC Participant Abuse, Continued

FORM DOCUMENTATION BOXES	COMMENT
<ul style="list-style-type: none"> This is a WARNING concerning WIC participant abuse in accordance to the Rights & Responsibilities 	<ul style="list-style-type: none"> This box is to be checked if the participant is only given a WARNING and is not being terminated/ suspended on this occasion.
<ul style="list-style-type: none"> Continual WIC Program abuse may result in SUSPENSION of benefits &/or repayment of benefits or an increase in length of the SUSPENSION of benefits including a one (1) year mandatory disqualification for an assessment of a claim >\$100, assessment of a claim for dual application & assessment of a second or subsequent claim of any amount. 	<ul style="list-style-type: none"> This box is to be checked when issuing a WARNING or a SUSPENSION of benefits.
<ul style="list-style-type: none"> Participant has been DISQUALIFIED for _____ (length of time) 	<ul style="list-style-type: none"> This box is to be checked when DISQUALIFYING a participant. The length of the time of DISQUALIFICATION must be indicated on the form.
<ul style="list-style-type: none"> This written document serves as the Participant's fifteen (15) day notification of SUSPENSION of benefits for this offense or any other reported/documented abuse 	<ul style="list-style-type: none"> This box is to be checked on all participant abuse, both WARNINGS or SUSPENSIONS. If the clinic is suspending a participant on the first abuse, then a 20 day prorated food package must be given that month as this is the first notification.
<ul style="list-style-type: none"> Participant must repay the Utah WIC Program for the benefits received in violation of the Utah WIC Program policies & procedures & Federal Register §246, 12 in the amount of \$ _____ 	<ul style="list-style-type: none"> This box is to be checked if it has been determined that the WIC participant has received benefits in violation of WIC Program policies & procedures & the Federal Register. The total price of the food instrument(s) that were improperly exchanged &/or redeemed in the alleged violation(s) will need to be determined by contacting the help desk. The total amount of all the food instruments involved is placed on the line.
<ul style="list-style-type: none"> Fair Hearing/Agency Conference form was given to the participant or appear on the back of this form. 	<ul style="list-style-type: none"> Check this box with all participant abuse either WARNINGS OR SUSPENSIONS. A Fair Hearing /Agency Conference form must be on the back of the copy of the WIC Participant Alleged Abuse Report given to the participant.

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G.6. WIC Participant Abuse, Continued

<ul style="list-style-type: none">● <i>Responsibilities Agreement was reviewed with the participant/endorser/ proxy regarding abuse of the Utah WIC Program & corrective actions</i>	<ul style="list-style-type: none">● Check this box with all participant abuse, either WARNINGS or SUSPENSIONS. The clinic personnel must review the specific alleged abuse with the participant in regards to the Responsibilities Agreement.
<ul style="list-style-type: none">● <i>The clinic personnel completing the form must sign and date the form .</i>	<ul style="list-style-type: none">● The clinic personnel conducting the counseling & assignment of corrective action, must date & sign the form.

2. Distribution of the forms

- (a) Original to participant's chart
- (b) Copy to participant
- (c) Copy to clinic's Participant Abuse File (which contains the abuse log)

Corrective Action

D. Corrective Action

1. Mandatory Disqualification

Mandatory Disqualification

- (a) **Mandatory Disqualification.** Except as provided in the Federal Register/Vol. 65, No. 251/§ 246.12/paragraphs (u)(2)(ii) and (u)(2)(iii), whenever the local agency assesses a claim of \$100 or more, assesses a claim for dual participation, or assess a second or subsequent claim of any amount, the local agency must disqualify the participant for one year.

Referral to Law Enforcement Authorities.

- (b) **Referral to law enforcement authorities.** When appropriate, the State or local agency must refer participants who violate program requirements to Federal, State, or local authorities for prosecution under applicable statutes.

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G.6. WIC Participant Abuse, Continued

Exceptions to mandatory disqualification	<p>(c) Terminating a mandatory disqualification. The local agency may permit a participant to reapply for the Program before the end of a mandatory disqualification period if full restitution is made or a repayment schedule is agreed upon or, in the case of a participant who is an infant, child, or under age 18, the State or local agency approves the designation of a proxy.</p> <p>(d) Exceptions to mandatory disqualification. The local agency may decide not to impose a mandatory disqualification if, within 30 days of receipt of the letter demanding repayment, full restitution is made or a repayment schedule is agreed on, or, in the case of a participant who is an infant, child, or under age 18, the local agency approves the designation of a proxy.</p>
Suspension of Program Benefits not requiring a mandatory disqualification	<p>2) Suspension of Program Benefits not requiring a mandatory disqualification - A participant may receive a WARNING or have WIC Program benefits suspended for a period of one (1) to three (3) months in accordance with the Corrective Actions.</p> <p>(a) If the participant's benefits are being suspended in accordance with the Corrective Actions, indicate the reason(s) for the suspension of benefits, including the length of the disqualification.</p> <p>(b) If the local agency cannot establish a specific claim against the participant, but can identify a violation, than the violation will be considered a first or subsequent offense, but cannot be considered a violation in which a claim is established.</p>
Continuation of Program Benefits	<p>3) Continuation of Program Benefits - the participant shall be allowed to continue in the Program if the local agency determines that :</p> <p>(a) In the case of a participant who is an infant, child, or under age 18, the local agency approves the designation of a proxy and documents this designation on the WIC Participant Alleged Abuse Report.</p>
Timeframe for Repeated Offenses	<p>4) With the exception of a mandatory disqualification, the timeframe that the first offense is counted toward a subsequent or second offense and the appropriate corrective action, or any repeated violations/abuse, will be within the current certification period of the participant. The participant must be counseled regarding the first offense before an additional corrective action can be assigned for a repeated offense.</p>

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G.6. WIC Participant Abuse, Continued

- 5) At the time the local agency notifies a participant of a disqualification, the local agency must advise the participant of the procedures to follow to obtain a fair hearing pursuant to § 246.9. **PRIOR TO DISQUALIFICATION, THE PARTICIPANT MUST BE GIVEN 15 DAYS NOTICE OF THE ACTION TO BE TAKEN AGAINST THEM.** The WIC Participant Alleged Abuse Report form will serve as the notice if given 15 days prior to action taken.

Claims against participants

- 6) Claims against participants
- (a) If the local agency determines that program benefits have been obtained or disposed of improperly as the result of a participant violation, the local agency must establish a claim against the participant for the full value of such benefits. For all claims, the local agency must issue a letter demanding repayment. If full restitution is not made to the State agency or a repayment schedule is not agreed by the State agency, within 30 days of receipt of the letter, the State agency must take additional collection actions until restitution is made or a repayment schedule is agreed on, unless the State agency determines that further collection actions would not be cost-effective. Issuing a letter requesting payment will be considered the minimum in establishing a claim or collection. The local agency should contact the State agency to determine if further investigation is cost-effective in the establishment of a claim or collection.

Procedures

- (b) **Procedures.**
- (1) Complete the **WIC Participant Abuse Log** by indicating the corrective action taken and the requested amount of the established claim.
- (2) At the time the local agency issues the demand letter, the local agency must advise the participant of the procedures to follow to obtain a fair hearing pursuant to §246.9 and that failure to pay the claim may result in disqualification. In addition to establishing a claim, the local agency must determine whether disqualification is required by §246.12(u)(2).

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G.6. WIC Participant Abuse, Continued

- (3) The demand letter will be printed with an original and three (3) copies. One copy will be kept in the Participant Abuse file and documented that it was given on the Participant abuse log. One copy will be sent to the State WIC agency, and two (2) copies will be given to the participant. An envelope addressed to the State WIC office will be given along with the two copies of the demand letter to the participant.
- (4) The WIC client will be instructed to send one copy of the demand letter along with the payment requested to the State WIC agency. If the WIC client wishes to establish a repayment schedule, then the WIC client must contact the State WIC agency. The local agency will not collect any repayment of benefits.
- (5) The clinic will place a priority 1 comment in screen 108 indicating that a repayment of benefits claim has been established against the participant and the length of disqualification if the repayment is not received by the State agency.
- (6) Before WIC benefits can be issued, the clinic will contact the State agency to determine if the claim has been paid.
- (7) The State agency must document the disposition of all participant claims.

Procedures for calculation of claims

(c) Procedures for calculation of claims

- (1) Determine how long the inappropriate benefits were issued.
- (2) Determine the WIC food instrument number(s) redeemed and
- (3) Calculate the total dollar amount of food redemption for the length of time involved. The Help Desk can provide this redemption dollar information if you have determined the food instrument numbers.
- (d) Document all required information on the WIC Participant Alleged Abuse Report. This information should include:
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G.6. WIC Participant Abuse, Continued

<ul style="list-style-type: none">• All information required for the participant abuse case	<ul style="list-style-type: none">• That the participant was advised in writing of the abuse and the repayment of benefits
<ul style="list-style-type: none">• The participant has a right to a Fair Hearing, and that a fair hearing form was given	<ul style="list-style-type: none">• The value of the improperly issued benefits which are being considered for repayment
<ul style="list-style-type: none">• The participant was given 15 day notification of the adverse action	<ul style="list-style-type: none">• The participant may be suspended or disqualified after the proper notification if payment is not received

- (e) The local agency will retain a copy Participant Alleged Abuse Report along with a copy of the request for repayment of benefits letter after all information is obtained.
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G.7. Dual Application

Dual Application Report

1. The State agency shall be responsible for the following:
 - A. In conjunction with the local agency, the prevention and detection of dual application within each local agency and between local agencies
 - B. With local agency computerization of food instrument issuance, possible Dual Participation is reported to the local agency at each beginning of day run.
 - C. The **Dual Application Report** will list those participants suspected of dual participation. Local agencies will be required to resolve each case and keep record of the investigation with pen and ink documentation on the **Dual Application Report**.
 - D. Participants found committing dual application MUST be terminated from one of the clinics immediately (or both clinics if appropriate).
 - E. If identification of a WIC participant needs to be verified when resolving dual application, the clinic personnel must verify the identification of each participant at certification or voucher issuance. For a child participant, a birth certificate, or other records that local agency personnel consider adequate, will be utilized to establish the identity of the participant.
 - F. There are no areas in the State of Utah currently operating a Commodity Supplemental Food Program and a WIC Program.

Dual Application Procedures and Documentation

- G. Local WIC clinics must make pen and ink documentation on the **Dual Application Report** noting the date they contacted any other local agency/clinics, the name of the person contacted, and the resolution. All beginning of day reports, which include the **Dual Application Report**, should be bound and tagged by month and Federal Fiscal year.
 - 1) If dual application is within a local agency and it is due to twins (triplets, etc.) or duplicate records (names, address or social security number):
 - 2) The clinic will make a brief pen and ink notation regarding the apparent problem and resolution (for example: "twins") with the date of resolution. Make any appropriate changes to the participant data fields if needed. The supervisor or designated clinic staff person will then resolve the dual application on the UWIN System by going to screen WICPS513 and document the false dual by entering an 'R' in the action field.

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G.7. Dual Application, Continued

**Dual
Application
Procedures and
Documentation**

H. If dual application is between two local agencies/clinics then follow these procedures:

- 1) Contact the other clinic site to compare information and determine if the individuals are really the same WIC participant.
- 2) If the individual is NOT the same participant, then both clinics will document a minimal pen and ink notation on the **Dual Application Report** that this is not the same participant. The clinic will resolve the dual by going to screen WICPS513 and entering an 'R' in the action field.
- 3) If the individuals are the same participant, then an agreement must be made between clinics as to which clinic will keep the participant active and which clinic will terminate the participant. Both clinics will need to make appropriate pen and ink notations on the **Dual Application Report** indicating who was contacted, name of clinic staff, how the dual participation will be resolved, which clinic will terminate the client and the date of resolution. After completing the investigation and documentation, the supervisor or designated clinic staff person of the clinic with the dual will document the resolution on the UWIN System using screen WICPS513 entering an 'R' in the action field.
- 4) During the discussion of the resolution between clinics, the determination must be made if the participant was issued food instruments in the same month(s). In the clinic where the participant remains active, the clinic staff will contact the Help Desk to determine if these food instruments have been redeemed from both clinics. If they have, an amount will be determined from the redemption of these food instruments and the WIC participant will be assessed a claim. Documented Dual Application by the participant is a mandatory one (1) year disqualification (Refer to §G5; 4. A. 1).
- 5) Additional corrective action should be enacted according to the participant abuse procedures.
- 6) Action taken against a participant must be documented on the **WIC Participant Alleged Abuse Report**.
- 7) The State Agency will monitor the local agency's documentation to these dual participation procedures and repayment of benefits.

2. In areas where the local agency serves a WIC population or operates a clinic site on or near a state border, the same as, or in proximity to another Indian, CSFP or state agency, the Utah WIC Program will enter into a Memorandum of Agreement with that agency for the detection and prevention of dual participation.

A. Immediate disqualification from one of the programs or clinics will be implemented for participants found in violation due to dual participation. Where deliberate misrepresentation is involved, the participant may be disqualified from participating in both programs or clinics as specified in § 216.12(k)(2).

G.8. Agency Conference & Fair Hearings

PARTICIPANTS OR APPLICANTS

- Definition**
1. An applicant or participant has the right to request a Agency Conference or a Fair Hearing whenever she/he believes that the local agency has adversely affected her/his receipt of WIC benefits. A request for a hearing is defined as any clear expression by the individual, the individual's parent, guardian, or other representative, for an opportunity to present its case to a higher authority is desired. The State or local agency shall in no way limit or interfere with the individual's freedom to request a fair hearing.
 2. When possible, an Agency Conference should be held to resolve the problem on the local level. An Agency Conference is defined as problem resolution discussion with the supervisory personnel of the clinic and the participant. The State Agency will have a representative present at a Agency Conference. In participating in the Agency Conference, the participant agrees to try and resolve the problem. If the Agency Conference does not resolve the problem to the applicant's satisfaction, or if the applicant does not want an Agency Conference, she/he has the right to a Fair Hearing with the State Department of Health Hearing Officer.
 3. The participant must be informed that the Agency Conference is optional and that they have a right to a Fair Hearing instead.
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- Notification of Appeal Rights**
1. The local agency shall provide to all applicants and participants the statements on the appropriate forms that outline their right to an Agency Conference or Fair Hearing, including instructions for making the appeal. Applicants and participants shall also be informed of their right to be represented by a relative, friend, legal counsel, or other spokesperson.
 2. Copies of the Agency Conference/Fair Hearing form shall be given to each person at the time of denial of participation or termination, one given to the individual, the other retained in their chart.
 3. This notification is not to be given at the expiration of a certification period, unless their benefits may be jeopardized at the next certification visit (as would be the case when the Priority System were being used by a local agency).
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G.8. Agency Conference & Fair Hearings, Continued

Time Limits for Request

1. The time limits concerning making an appeal are as follows:
 - A. A Conference or Hearing must be requested within 60 days from the date of the notice of adverse action was mailed or given to the applicant by the local agency.
 - B. The Conference should be held within two (2) weeks of the request. A Hearing must be held within three (3) weeks of receipt of request by the State Agency.
 - C. Written notification of the decision made in the Conference must be made to the appellant by registered mail within 15 days; in the case of a Hearing, notification must be made within 45 days.
 - D. If the appellant is not satisfied with the Conference decision, she/he may request a Hearing; this request must be made within 60 days from the effective date of the adverse action taken by the local agency.
2. Denial or Dismissal of Request
 - A. The State and local agencies shall not deny or dismiss a request for a Hearing unless:
 - 1) The request is not received within the 60-day time limit set above.
 - 2) The request is withdrawn in writing by the appellant or a representative.
 - 3) The appellant or representative fails, without good cause, to appear at the scheduled hearing.
 - 4) The appellant has been denied participation by a previous hearing and cannot provide evidence that circumstances relevant to Program eligibility have changed in such a way as to justify a hearing.

Continuation of Benefits

1. Participants suspended or disqualified from the Program at any time during the certification period shall continue to receive Program benefits until the Conference or Hearing Official reaches a decision, if they appeal the termination or suspension of Program benefits within the 15 days advance "Adverse Action Notice" provided affected participants. Applicants who are denied benefits at initial certification or at subsequent certifications may appeal the denial but shall not receive benefits while awaiting the Hearing.

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G.8. Agency Conference & Fair Hearings, Continued

**Uniform Rules
of Procedures**

1. Agency Conference requests by appellants can be made verbally, or in writing and delivered or sent to the local agency.

**Agency
Conferences
Procedures**

2. The Conference shall be presided over by an impartial representative of the local agency, such as an administrator or supervisor, who has no personal stake or involvement in the decision, and who was not directly involved in the initial determination of the action being taken.
3. The hearing official shall mail a notice of the Conference which includes an explanation of the Conference procedure and the date, time, and place and reason for the Conference to the appellant and the appellant's representative. The Agency Conference will be scheduled within 2 weeks of the date of request, unless both parties agree to an earlier date. The Hearing shall be accessible to the appellant and shall be held within three weeks from the date the State Agency received the request for a hearing. The State or local agency shall provide the appellant with a minimum of 10 days advance written notice of the time and place of the hearing and shall enclose an explanation of the hearing procedure within the notice.
4. Local agency staff who have knowledge of the dispute should be in attendance as well as legal counsel for the agency if the agency desires. The local agency shall have the opportunity to present oral and documentary evidence and to examine, question, or refute any testimony or other evidence, including the opportunity to confront and cross-examine witnesses.
5. The agency representative shall conduct the Conference without unduly complex or legalistic procedures, taking into consideration the appellant's background and education.
6. The local agency hearing official will also provide the appellant or representative an opportunity to:
 - A. Examine, prior to and during the hearing, the documents and records presented to support the decision under appeal;
 - B. Be assisted or represented by an attorney or other persons;
 - C. Bring witnesses;
 - D. Advance arguments without undue interference;
 - E. Question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses; and
 - F. Submit evidence to establish all pertinent facts and circumstances in the case.

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G.8. Agency Conference & Fair Hearings, Continued

7. Decisions of the hearing official will be factually based on the hearing record. The verbatim transcript or recording of testimony and exhibits or official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding shall constitute the exclusive record for the final decision by the hearing official. This record shall be retained for four (4) years. This record shall also be available for copying and inspection, to the appellant or representative at any reasonable time.
8. A decision by the hearing official shall be binding on the local agency and should summarize the facts of the case, specify the reasons for the decision, and identify the supporting evidence and the pertinent regulations or policy. The decision shall become a part of the record.
9. Within 45 days of the receipt of the request for hearing, the appellant or representative shall be notified in writing of the decision and the reasons for the decision identifying the supporting evidence, pertinent regulations or policies.
10. If the decision is in the favor of the appellant and benefits were denied or discontinued, benefits shall begin immediately. If the decision concerns disqualification and is in favor of the agency, as soon as administratively feasible, the local agency shall terminate any continued benefits, as decided by the hearing official.
11. The appellant may appeal a local hearing decision to the State Agency, provided that the request for appeal is made within 15 days of the notice of the hearing decision.

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G.8. Agency Conference & Fair Hearings, Continued

**Repayment of
Certain
Benefits by
WIC Recipients**

1. When a State or local agency/clinic pursues collection of a claim against an individual participant who has been improperly issued benefits, the person shall be advised in writing of the reason(s) for the claim, the value of the improperly issued benefits which must be repaid, and of the right to a fair hearing.
2. If the decision regarding repayment of benefits by the appellant is in favor of the agency, the State or local agency shall resume efforts to collect the claim, even during pendency of an appeal of a local-level fair hearing decision to the State agency.
3. If the decision being appealed concerns disqualification from the Program, the appellant shall not continue to receive benefits while an appeal to the State agency of a decision rendered on appeal at the local level is pending.
4. The decision of a hearing official at the local level is binding on the local agency and the State agency unless it is appealed to the State level and overturned by the State hearing official.
5. The appellant may appeal a local hearing decision to the State Agency, provided that the request for appeal is made within 15 days of the mailing date of the hearing decision notice.
6. All local agency conference records and decisions shall be available for public inspection and copying, provided the names and addresses of participants and other members of the public are kept confidential.

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G.8. Agency Conference & Fair Hearings, Continued

Uniform Rules of Procedures

Fair Hearing Procedures

1. If the Agency Conference does not resolve the appellant's dispute to her/his satisfaction, or the participant wants a Fair Hearing immediately, the State Office should be notified verbally or the Fair Hearing Request form should be sent directly to the State WIC Office. A Fair Hearing will be scheduled within three (3) weeks from the date the request is received by the State Office.
2. The Hearing examiner will mail a notice of the Hearing which includes an explanation of the Hearing procedure and the date, time, place and reason for the Hearing to the appellant, any authorized representative of the appellant and the local agency at least 10 days before the Hearing, unless both parties agree to an earlier date.
3. The Hearing Examiner shall conduct the Hearing using the uniform rules of procedures outlined above for the Agency Conference.

A. Decision

- 1) An official report containing the substance of what transpired at the Hearing, together with the papers and requests filed in the proceedings shall constitute the exclusive record for the final decision by the Hearing official. This record shall also be available for copying and inspection, to the appellant or representative at any reasonable time.
- 2) At the conclusion of the formal hearing, the hearing officer shall take the matter under advisement and shall submit to the executive director of DOH a proposed decision, based exclusively on evidence and other material introduced at the hearing.
- 3) The proposed decision shall be in writing and shall contain findings of fact and conclusions of law.
- 4) The executive director of DOH may adopt the proposed decision, or any portion of the decision, or he/she may reject the proposed decision, or any portion thereof, and make his own independent determination based upon the record; or, he/she may remand the matter to the hearing officer to take additional evidence. In the latter case, the hearing officer thereafter shall submit to the executive director of DOH a new proposed decision. The final determination of the executive director for DOH constitutes final administration action.
- 5) Within 45 days of the receipt of the request for a hearing, the appellant or representative shall be notified of the decision in writing, the reasons for the decision, and to the extent it is available to him/her, of his/her right to appeal to a Departmental hearing or judicial review.
- 6) If the decision is in the favor of the appellant and benefits were denied or discontinued, benefits shall begin immediately. If the decision concerns disqualification and is in favor of the agency, as soon as administratively feasible, the local agency shall terminate any continued benefits, as decided by the hearing official.
- 7) All departmental hearing decisions shall be accessible to the public (subject to provisions of safeguarding confidential information).

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G.8. Agency Conference & Fair Hearings, Continued

Rehearings

1. Time for Filing. Any petition for rehearing must be filed no later than within 10 days after receipt of notice of the executive director's final determination.
2. Contents of Petition. A petition for rehearing shall set forth specifically the detail and particulars in which it is claimed the order is unlawful, unreasonable, or unfair. If the petition is based upon a claim that the hearing officer failed to consider certain evidence it shall include an abstract of that evidence. The petition may be based upon newly discovered evidence. When such ground is used, the petition shall be accompanied by an affidavit setting forth the nature and extent of such evidence, its relevancy to the issues involved, and a statement that the party could not with reasonable diligence have discovered the evidence prior to the hearing.
3. Action on Petition. Upon the filing of a petition for rehearing, the hearing officer may set a time for hearing said petition or may summarily grant or deny the petition in whole.
4. Rehearings Limited. If an order is made granting the petition for rehearing, it shall be limited to the matter specified in the order. Upon rehearing, the hearing officer may confirm the former judgment, reverse, change or modify the same in any particular. Such order and decision shall have the same force and effect as the original order but shall not affect any right or the enforcement of any right arising out of or by virtue of the original order unless so ordered by the hearing officer.
5. Action on Petition. The hearing officer will act upon a petition for rehearing within thirty (30) days from the date of its filing. If no action is taken by the hearing officer within such time, it shall be deemed to be denied.
6. Submission of a petition for rehearing will automatically stay an order until final resolution of the petition unless otherwise determined by the hearing officer.

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G.8. Agency Conference & Fair Hearings, Continued

- Judicial Review**
1. Judicial review of a final determination of the executive director may be secured by the aggrieved party by filing a petition in the district court within 30 days after receipt of notice of the executive director's final determination.
 2. The petition, which shall be served upon the executive director, shall state the grounds upon which review is sought. With his/her answer, the executive director shall certify and file with court all documents and papers and a transcript of all testimony taken in the matter, together with the recommended findings of fact and conclusions of law of the hearing officer, and the final determination of the executive director.
 3. If the final determination of the executive director is consistent with the findings of fact and conclusions of law recommended by the hearing officer, the court shall review the record and may alter the final determination only upon a finding that the final determination is capricious, or not supported by the evidence.
 4. If the final determination of the executive director is not consistent with the findings of fact and conclusion of law recommended by the hearing officer, the executive director shall prepare and file with the court at the time of filing the answer to the petition, findings of fact and conclusions of law to support the final determination of the executive director. The petitioner shall have 15 days after receipt of the executive director's findings of fact and conclusions of law to amend the petition for review. The court may affirm or amend the final determination of the executive director, or require further or additional testimony necessary to be taken, and issue an order based on its own findings of fact and conclusions of law.
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APPEALS OF VENDORS OR LOCAL AGENCIES

- Definition**
1. Food vendors or local agencies which have been adversely affected by a State Agency decision may request an Agency Conference with the State WIC Office, or a Fair Hearing as specified above.
 2. The uniform rules of procedures set forth above apply and will be followed.
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G.8. Agency Conference & Fair Hearings, Continued

- Requirements**
1. The State agency shall provide a hearing procedure whereby a food vendor or local agency adversely affected by a State or local agency action may appeal the action.
 2. The right of appeal shall be granted when a local agency's or a food vendor's application to participate is denied, or during the course of the contract or agreement when a local agency or vendor is disqualified or any other adverse action which affects participation is taken. Expiration of a contract or agreement with a food vendor or local agency shall not be subject to appeal.
 3. The adverse action affecting a participating local agency shall be postponed until a hearing decision is reached.
 4. The State agency may take adverse action against a vendor after the 30 day advance notification period mandated by paragraph (2) (a) of this section has elapsed. In deciding whether or not to postpone adverse action until a hearing decision is rendered the State Agency shall consider whether participants would be unduly inconvenienced and may consider other relevant criteria, determined by the State agency.
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- Procedure**
1. The State agency hearing procedure shall at a minimum provide the local agency or vendor with the following:
 - A. Written notification of the adverse action, the cause(s) for and the effective date of the action. Such notification shall be provided to participating food vendors not less than one month (30 days) in advance of the effective date of the action. In the case of the disqualification of local agencies, the State agency shall provide not less than 60 days advance notice of pending action.
 - B. The opportunity to appeal the adverse action within a time period specified by the State agency in its notification of adverse action.
 - C. Adequate advance notice of thirty (30) days will be given as to the time and place of the hearing to provide all parties involved sufficient time to prepare for the hearing.
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G.8. Agency Conference & Fair Hearings, Continued

Procedure

- D. The opportunity to present its case and at least one opportunity to reschedule the hearing date upon specific request.
- E. The opportunity to confront and cross examine adverse witnesses.
 - 1) When WIC vendors are disqualified based on a Food Stamp Disqualification, the Food Stamp investigator will not appear at a State level hearing unless subpoenaed.
- F. The opportunity to be represented by counsel, if desired.
- G. The opportunity to review the cause record prior to the hearing.
- H. An impartial decision maker, whose decision as to the validity of the State or local agency's action shall rest solely on the evidence presented at the hearing and the statutory and regulatory provisions governing the Program. The basis for the decision shall be stated in writing although it need not amount to a full opinion or contain formal findings of fact and conclusions of law.
- I. Written notification of the decision concerning the appeal, within 60 days from the date of receipt of the request for a hearing by the State agency.

Continuing Responsibilities

- 1. Appealing an action does not relieve a local agency or a food vendor permitted to continue in the Program while its appeal is in process from the responsibility of continued compliance with the terms of any written agreement or contract with the State or local agency.

Judicial Review

- 1. If a State level decision is rendered against the local agency or food vendor and the appellant expresses an interest in pursuing higher review of the decision, the State agency shall explain any further State level review of the decision and any available State level rehearing process. If neither is available or both have been exhausted, the State agency shall explain the right to pursue judicial review of the decision.

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FAIR HEARING

If the clinic takes any adverse action against you, you have the right to ask for an informal meeting or a formal hearing. This action may include not being put on or being taken off of the program, or having to pay back the value of food improperly given to you.

You may wish to contact a local legal service office or other community program. They can help you decide if you should ask for a meeting or a hearing. You may be able to receive free legal aid. Ask your local WIC clinic where this may be obtained. You may bring an attorney or any other person with you to the meeting or hearing.

If you feel you are not being treated fairly, you may ask for a meeting with your local WIC Clinic Supervisor. You must ask for this meeting within 60 days from the date of action. At this meeting, you may discuss any items about the WIC Program you do not agree with.

If the meeting with the local clinic does not resolve your complaint or you would like a formal hearing, you should contact the State WIC office. You may do this by phone, in writing, or in person. You must ask for the hearing within 60 days of the date the action was taken against you.

If you are taken off of the program any time during your certification period you should appeal the action within 15 days. You will then receive vouchers until your hearing is resolved or your certification period ends, whichever occurs first.

Utah State Department of Health
Division of Community & Family Health Services
Utah WIC Program
288 North 1460 West PO Box 141013
Salt Lake City, Utah 84114-1013
(801) 583-6960 or 1-800-662-3638

AUDIENCIAS IMPARCIALES

Si la clinica tomara alguna medida adversa en su contra, usted tiene el derecho de solicitar una reunion informal o una audiencia formal. Por medida adversa se puede entender el no ser considerada para el programa o ser retirada de el, o el tener que pagar por la comida que se le haya dado indebidamente.

Si lo desea puede ponerse en contacto con una oficina local de servicio legal u otro programa de la comunidad. Ellos pueden ayudarle a decidir si usted debe solicitar una reunion o una audiencia. Es posible que reciba asistencia legal gratis. Pregunte en la clinica local del WIC donde puede obtener dicho servicio. Puede pedir que la acompañe un abogado o cualquier otra persona a la reunion o a la audiencia.

Si considera que no se le esta tratando imparcialmente, puede pedir que se le permita reunirse con el supervisor de la clinica local del WIC. Debe solicitar dicha reunion dentro de los 60 dias posteriores a la fecha de la accion. En esa reunion puede tratar cualquier aspecto del Programa WIC con el que no este de acuerdo.

Si el mencionado procedimiento no resuelve su problema o si quisiera que se le concediera una audiencia formal, debe ponerse en contacto con la Oficina del WIC del estado, lo cual puede hacer por telefono, pos escrito, o en persona. Debe solicitar la audiencia dentro de los 60 dias posteriores a la fecha en que se tomo la accion en su contra.

Si se le retirara del programa en cualquier momento durante su periodo de certificacion debe apelar la accion dentro de los 15 dias siguientes. Entonces recibira vales hasta que se lleve a cabo su audiencia o hasta que termine su periodo de certificacion, lo que quiera que ocurra primero.

Utah State Department of Health
Division of Community & Family Health Services
Utah WIC Program
288 North 1460 West PO Box 141013
Salt Lake City, Utah 84114-1013
(801) 538-6960 or 1-800-662-3638

WIC VENDOR ADMINISTRATIVE REVIEW REQUEST FORM

- If the State Agency takes any adverse action against you, you have the right to ask for an Administrative Review.
- You may wish to contact a legal service office or obtain legal assistance. They can help you decide if you should ask for a meeting or a hearing. You may bring an attorney or any other person with you to the Administrative Review.
- If you want an Administrative Review, please contact:

**Utah State Department of Health
Division of Family Health Services
Utah WIC Program
State Vendor Management Coordinator
PO Box 141013
Salt Lake City, Utah 84114-1013
538-6960 or 1-877-942-5437**

- If you do ask for an Administrative Review, be aware that you have certain rights. These are:
 1. The right to appeal the State's decision to sanction your store. You may make this request verbally or in writing. You must make this request within thirty (30) calendar days from the effective date of the sanction. Please contact the State WIC Agency at the following address and phone:
 2. The Administrative Review will be held within three (3) weeks from the date of receipt of the request. At least ten (10) days advance notice will be given to the individual/vendor, specifying the time and place of the hearing. Appealing adverse action and its process does not relieve the vendor from responsibility of continuing compliance with their terms of the agreement with the Utah WIC Program.
 3. The right to receive advance notice of the time and place of the Hearing.
 4. The right to present your case. This includes the right to one opportunity to reschedule your hearing upon making a written request. This request must be received by the Hearing Officer before the originally scheduled Hearing.
 5. The right to confront and cross-examine any witnesses. Where WIC vendors are disqualified based on a Food Stamp disqualification, the Food stamp investigator will not appear at a State level hearing unless subpoenaed.
 6. The right to be represented by a lawyer, yourself, or anyone else that you choose.
 7. The right to review any case record prior to the Hearing.
 8. The right to an impartial decision maker.
 9. The right to receive written notification of the decision on the appeal. You have the right to receive this decision within sixty (60) calendar days from the day you filed for the appeal.

In accordance with Federal Law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, or disability. To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Ave, SW, Washington, D.C. 20250-9410 or call (202) 720-5964 (voice & TDD). USDA is an equal opportunity provider. All vendors have the right to appeal a State Agency decision through an agency conference and/or a fair hearing procedure within thirty (30) days of notification pertaining to denial of application to participate, sanction points, civil money penalty, disqualification or any other adverse action which affects participation during the agreement performance period. Expiration of an agreement with a food vendor is not subject to appeal. Disqualification from the WIC Program may result in disqualification as a retailer in the Food Stamp Program. Such disqualification may not be subject to administrative or judicial review under the Food Stamp Program. Direct all requests for an Agency Conference or a Fair Hearing to the State WIC Office. Utah WIC Program; State Vendor Management Coordinator; PO Box 141013; Salt Lake City, Utah 84114-1013; or call 1-877-5437